

State of Hawai'i
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawai'i 96813

February 23, 2007

Chairperson and Members
Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

Board Members:

SUBJECT: REQUEST FOR APPROVAL OF THE DEED OF CONSERVATION EASEMENT INCLUDING DEVELOPMENT RIGHTS MADE BY DUNBAR RANCH PARTNERS IN FAVOR OF MAUI COASTAL LAND TRUST; AND FINAL APPROVAL OF A LAND CONSERVATION FUND GRANT OF \$1.1 MILLION TO MAUI COASTAL LAND TRUST FOR PARTIAL MATCH FOR THE PURCHASE OF THE AGRICULTURAL CONSERVATION EASEMENT ON KAINALU RANCH, MOLOKA'I

SUMMARY:

This Board Submittal requests final approval for a grant of up to \$1,100,000 from the Land Conservation Fund (LCF) to the Maui Coastal Land Trust (MCLT) to be used, along with other funding secured by MCLT, to purchase a perpetual agricultural conservation easement on 167 acres of Kainalu Ranch in southeast Moloka'i. The estimated appraised value of the conservation easement is \$2,900,000; the Natural Resources Conservation Service (NRCS) of the U.S. Department of Agriculture (USDA) has committed to provide \$1,400,000 through the Farm and Ranchland Protection Program (FRPP) and the landowner has offered to provide the remainder as a bargain sale reduction in price. MCLT will hold the conservation easement to the property and the current landowner will retain fee title and continue management of the property, subject to MCLT monitoring the conditions of the conservation easement. The Board first approved this grant on April 13, 2006, subject to certain terms and conditions that have since been fulfilled. Staff respectfully requests that the Board review the completion of these conditions and grant its final approval for disbursement of this grant.

BACKGROUND:

This acquisition is a joint effort of the MCLT, USDA/NRCS, and the State of Hawai'i to protect agricultural lands from future subdivision and residential development. MCLT, using a combination of funds from the FRPP, the landowner, and the Hawai'i Land Conservation Fund, will purchase a perpetual agricultural conservation easement from the landowner, restricting activity on the lands in perpetuity to agricultural uses.

Section 9 of Act 156, Session Laws of 2005, provided an appropriation of \$1,100,000 from the Land Conservation Fund "for the purchase of agricultural easements to protect farm and ranch lands throughout the state" to "use and preserve federal farm and ranch land protection program funding for agricultural and cultural lands in Hawaii." To be eligible for USDA/NRCS FRPP funding, a farm or ranchland must contain prime, unique or other productive soil or historical or archaeological resources. MCLT applied for and was awarded funding in 2005 by USDA/NRCS through the FRPP program to purchase an agricultural easement for the subject property.

MCLT is a 501(c)(3) nonprofit organization, incorporated in 2001 for charitable, scientific, and/or educational purposes, including the acquisition, preservation, and protection of coastal lands in Maui Nui in furtherance of the preservation of the integrity of the natural environment for the enjoyment of current and future generations. As such, MCLT qualifies under state law (Hawai'i Revised Statutes (HRS) Chapter 198) as a holder of conservation easements.

A Cooperative Agreement between MCLT and the Commodity Credit Corporation (a financial arm of USDA) was executed August 18, 2005, outlining the financial transaction for the acquisition of agricultural conservation easements and the long-term relationship of the parties for management. The CCC provides federal funding for the FRPP as a 50% match for purchases of permanent agricultural conservation easements on farm and ranchlands. MCLT agrees to hold the easement and provide permanent monitoring of the land to assure compliance with the terms of the easement by the current and all future landowners. The landowner will continue to manage the land for approved agricultural practices.

On April 13, 2006, the Board authorized a grant of up to \$1,100,000 from the Hawaii Land Conservation Fund for MCLT to acquire and hold a perpetual agricultural conservation easement on Kainalu Ranch, subject to certain terms and conditions. Following this approval, the initial appraisal completed for this easement was rejected by the State Land Division and an independent State appraisal was then contracted. This second appraisal, which estimates the value of the conservation easement to be \$2,900,000, has now been accepted by both State and Federal reviewers. Pending approval of this submittal, the State will provide \$1,100,000, the NRCS, through FRPP, is providing \$1,400,000, and the landowner is donating land value to make up the additional non-federal match for the purchase.

DISCUSSION:

On April 13, 2006, the Board authorized the Chairperson to execute a Memorandum of Agreement with MCLT and to provide a grant of up to \$1,100,000 from the Hawaii Land Conservation Fund for MCLT to acquire and hold a perpetual agricultural conservation easement on Kainalu Ranch, subject to:

1. certification of the appraisal as reasonable and appropriate by USDA/NRCS and by the Department;
2. if the initial appraisal is not certifiable, authorize the Department to obtain a second State contracted independent appraisal to determine fair market value of subject interest;
3. compliance with Act 156, SLH 2005 requirements;
4. compliance with the federal FRPP grant requirements;
5. the conservation easement containing language that provides:
 - a. that any interest acquired by MCLT may be sold, leased or otherwise disposed of only with the prior written approval of the DLNR;
 - b. should the conservation easement be sold, leased or otherwise disposed of in the future, that portion of the proceeds equal to the proportion of the original acquisition price paid for by the State, shall be repaid to the State; and
 - c. that any conservation easement established may be transferred only as provided by rules of the federal FRPP program; and
7. approval of the Memorandum of Agreement and conservation easement by the Attorney General's office.

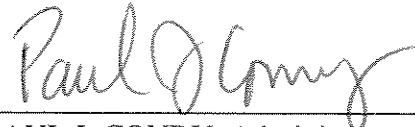
On June 23, 2006, after review by the State Attorney General's office, DLNR and MCLT entered into a Memorandum of Agreement containing the conditions mentioned above. On February 6, 2007, a second State-contracted appraisal was reviewed and accepted by DLNR. On February 13, 2007, DLNR received a copy of the final conservation easement for the Kainalu Ranch property. This conservation easement is now being reviewed by the State Attorney General's office.

RECOMMENDATION:

That the Board:

1. Approve the draft Deed of conservation Easement Including Development Rights made by Dunbar Ranch Partners in favor of the Maui Coastal Land Trust, subject to review and approval of the Attorney General's Office.
2. That, conditioned upon the review and approval of the conservation easement by the Attorney General's Office, the Board grant its final approval for the disbursement of a \$1.1 million grant from the LCF to the MCLT for the purchase of the Kainalu Ranch agricultural conservation easement.

Respectfully submitted,

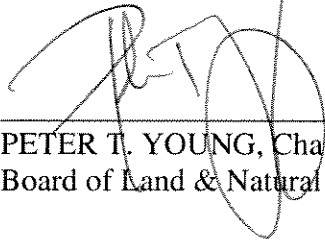


PAUL J. CONRY, Administrator
Division of Forestry & Wildlife

Attachments:

- Exhibit 1: Memorandum of Agreement.
- Exhibit 2: Appraisal Review Certificate.
- Exhibit 3: Deed of Conservation Easement Including Development Rights
- Exhibit 4: April 13, 2006 Board Submittal

APPROVED FOR SUBMITTAL:



PETER T. YOUNG, Chairperson
Board of Land & Natural Resources

"Property") and shown on Exhibit B (site maps), which are attached to and incorporated into this Easement by this reference.

A. **Description of the Property and Surroundings**

1. *Property Location.* The Property is on the southeast coast of Moloka'i approximately 18 miles east from the town of Kaunakakai and approximately 7 miles west from Halawa Valley.

2. *General Property Description.* The Property is long and narrow, running from the shoreline up the mountain to approximately 1,400 feet in elevation. Currently there are no structures on the Property. Kamehameha V Highway, which runs near the coastline in this area, divides the Property. Almost all of the Property, lies *mauka* (mountain side of) the Kamehameha V Highway. That portion consists of sloped terrain, cut by deep natural gulches. While the Property is more arid in the *makai* (ocean side) sections, rainfall is more frequent as the elevation increases. Although alien species are predominant over many parts of the Property, native plants, some rare, may be found in abundance in some of the gulches which have remained largely inaccessible to foraging animals. While the Property terrain is sloped, as with many places in Hawai'i, the land can be very productive, depending on crop selection, farm management styles and water availability. The approximately 5,000 square feet of the Property on the *makai* the Highway of Puniuohua I (the "Coastal Area") is predominantly a coastal wetland-type area, not suitable or appropriate for farming or grazing, with typical coastal ecology found in the area. The coastline and ocean are visible to travelers along Kamehameha V Highway for much of the way.

3. *Surrounding Properties.* The lands above the Property include low to high mesic forests, with many areas of intact native plants and trees. Properties to the east and west of the Property share land and natural features similar the Property.

4. *History of Land Uses on the Property and Surrounding Areas.* The number of shoreside fishponds, middens, heiau and house sites attest to the extensive Hawai'iian presence in the area near the Property prior to western contact. The area's attractiveness to Hawai'iians comes in part from the freshwater springs in the general Kainalu area. In the western historic period, the shoreline was a landing area from which cattle were herded out to waiting ships in Pauwalu Harbor. The Property has historically been, and is currently being, used for grazing and holding of cattle and horses. Since about 1914, Grantor's family has owned the Property, which is part of Kainalu Ranch, a ranch of about 1,200 acres in total size. In recent years, Grantor has initiated extensive reforestation of native trees on parts of Kainalu Ranch.

5. *Nearby Development and Amenities.* Currently, there is only scattered low-density residential development along the southeast Moloka'i coastline. A small grocery store is located on Kamehameha V Highway, about two miles west of the Property. Short term tourist rental accommodations may be found in Pukoo and Waialua, especially near the coastline. The majority of the lands in this southeast region of Moloka'i are large-lot agricultural lands. Although much open space remains, in recent years the nearby area, like most of Hawai'i, has experienced

increased growth. While the surrounding area is also zoned for agriculture, residential-type development may be seen on some of the lands. These “farm dwellings” are referred by many as “gentlemen estates” due to their size and the limited agricultural activities seen on some of the lots. Because large estates are in high demand in Hawai‘i, land values are making it increasingly difficult for traditional farming.

6. *NRCS Agricultural Lands of Importance.* As determined by a soil survey of Moloka‘i conducted by the U.S. Department of Agriculture Natural Resources Conservation Service (“NRCS”), at least 100 acres of the 167-acre Property is considered by the NRCS to be either Prime Farmland (defined below) or Unique Farmland (defined below).

B. Land Use, Environmental and Right-to-Farm Policies and Laws

1. *Hawai‘i State Land Use District.* The Property is located within the “Agricultural” State Land Use District, as defined by Hawai‘i Revised Statutes (“HRS”) Chapter 205. HRS section 205-4.5 (supp. 2005) delineates uses on Agricultural lands based on the Hawai‘i Land Study Bureau’s Detailed land Classification, which provides “overall (master) productivity rating” for soils ranging from class A or B (best soils) to soils classified as C, D, E, or U. Uses permitted of right (without requiring discretionary approval) for class A or B soils include the following generalized uses: (1) cultivation of various crops, including orchards, forage, and timber; (2) game and fish propagation; (3) raising of various kinds of livestock; (4) farm structures, such as farm dwellings, employee housing, and farm buildings; (5) public buildings necessary for agriculture; (6) public and private open area types of recreational uses, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps; (7) public and private utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks and related water infrastructure; (8) retention and maintenance of historic buildings and sites; (9) roadside stands for the sale of agricultural products grown on the premises; (10) buildings and uses that are considered directly accessory to the above uses, including mills, storage, and processing facilities, maintenance facilities, vehicle and equipment storage areas; (11) agricultural parks; (12) agricultural tourism conducted on a working farm or farming operation; and (13) wind energy facilities and associated improvements, provided it is compatible with agriculture uses and causes minimal adverse impact on the agricultural land. HRS Chapter 205 also permits Agricultural lands to be subdivided into one-acre lots, unless county zoning is more restrictive.

2. *Hawai‘i Coastal Zone Management Act.* The Property is located within the Coastal Zone Management Area, as defined by the Hawai‘i Coastal Zone Management Act (“CZMA”), HRS Chapter 205A. Among the policies and goals of the CZMA are the following relevant to the Property: Adopt water quality standards and regulate point and nonpoint sources of pollution to protect and promote water quantity and quality planning and management practices that reflect the tolerance of fresh water and marine ecosystems and maintain and enhance water quality through the development and implementation of point and nonpoint source water pollution

control measures. With respect to the "Coastal Area" of the Property, defined further below, the CZMA following goal is relevant: minimizing, where possible, any development which would substantially interfere with or detract from the line of sight toward the sea from the State highway nearest the coast.

3. *County of Maui General Plan.* Section II(C) of the Maui County General Plan (1990) states as its agricultural objectives: fostering growth and diversification of agriculture and aquaculture throughout Maui County; and maximizing the use and yield of productive agricultural land throughout the County. Among the policies identified in the General Plan to carry out the above objectives are the following: support and promote programs to maintain the viability of diversified agriculture, specialty crops, forestry and aquaculture; ensure the availability of land that is well suited for agricultural production; support "right-to-farm" provisions in the event potential conflicts arise from adjacent residential uses; discourage subdivision of agricultural lands for primarily residential purposes.

4. *County of Maui Community Plan.* The Property is designated for agricultural use in the Moloka'i Community Plan, which articulates preservation policies in order to enhance the region's overall living environment. Objectives of the Moloka'i Community Plan relevant to the Property include: (a) discouraging uses and activities which adversely affect active diversified agricultural endeavors within designated agricultural use areas; discouraging development of land under agricultural use for passive agricultural, estate residential uses; (b) promoting and maintaining agriculture as a major economic activity with emphasis on a regional diversified agricultural industry, and (c) preserving open space vistas by discouraging linear development along the highways traversing the District.

5. *County Zoning.* The Property is zoned "Agriculture," as defined by Chapter 19.30A of the Maui County Code, and is limited to the uses prescribed therein. The Maui County Code identifies as the purpose and intent of the agricultural district the following, among others: promote agricultural development; preserve and protect agricultural resources; reduce the land use conflicts arising from encroachment of nonagricultural uses into agricultural areas; mitigate rising property values of farm lands to make agricultural use more economically feasible; and, discourage developing or subdividing lands within the agricultural district for residential uses, thereby preserving agricultural lands and allowing proper planning of land use and infrastructure development; discourage establishment of nonagricultural subdivisions.

C. **Intent to Protect Agricultural Values of Property**

1. The Property possesses significant values worthy of being conserved, specifically productive agricultural lands (including Prime Farmland and Unique Farmland), natural habitat, open space and scenic values (collectively, the "Agricultural Values").

2. A more specific description of the Agricultural Values is included in a report to be kept on file at the offices of Grantee and incorporated herein by this reference, which documentation ("Baseline Documentation") the parties have agreed provides an accurate representation of the Property as of the effective date of this

grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

3. The land use, environmental and farming policies and laws designations referenced above in the Recitals are not sufficiently restrictive to protect the Agricultural Values of the Property, including the above policies and laws do not prohibit subdivision of the land and construction of dwellings or other non-agricultural use structures. An appraisal of the property conducted in 2006 states the "highest and best use" as permitted by current zoning laws would be subdivision into 22 residential lots, with minimum lot sizes of two acres, and with each lot entitled, "of right," to two "farm dwellings," or 44 farm dwellings in total.

4. Grantor believes that with the intelligent and careful use of conservation easements, the agricultural resources and other Agricultural Values of the Property can be protected in a manner that also permits continuing private ownership of land and the continued use and enjoyment of the Property by Grantor.

5. Grantor and Grantee have applied for and been awarded funding to pay for part of the fair market value of the development rights to be conveyed by this Easement. Matching funding was awarded to Grantor and Grantee by the Hawai'i Department of Land and Natural Resources ("DLNR") from the Legacy Land Conservation Program. This program provides funding for unique and fragile places and resources in the State of Hawai'i, including, among other things, agricultural production areas. In addition, the Grantee has partnered with the United States under the Farm and Ranch Lands Protection Program ("FRPP"), 16 U.S.C. 3838h-3838i. The purpose of the FRPP is to purchase conservation easements on land with prime, unique, or other productive soil for the purpose of protecting topsoil from conversion to nonagricultural uses. FRPP is administered by the Natural Resources Conservation Service ("NRCS") on behalf of the Secretary of the United States Department of Agriculture. A portion of the funds used to purchase this Easement are provided by FRPP and entitle the United States to certain rights as set forth herein.

6. Grantor intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Agricultural Values of the Property in perpetuity and represents that the Property is free and clear of all encumbrances except those identified in Exhibit A, attached to this Easement.

7. Hawai'i Revised Statutes ("HRS") Chapter 198 provides that any public body and any organization which qualifies for and holds an income tax exemption under section 501(c) of the federal Internal Revenue Code of 1954, as amended, and whose organizational purposes are designed to facilitate the purposes of HRS Chapter 198, may acquire and hold conservation easements by purchase, agreement, donation, devise, or bequest.

8. Grantee warrants that Grantee is a charitable organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"), whose purposes include the acquisition, preservation and protection of coastal lands in Maui Nui, which includes lands on the

island of Molokaʻi, in furtherance of the preservation of the integrity of the natural environment for the enjoyment of current and future generations.

9. Grantee represents that Grantee is a “qualified organization,” as that term is defined in Section 170(h)(3) of the Code.

10. Effective January 26, 2007, Grantee has been classified a public charity under 501(c)(3) of the Code.

11. Grantor and Grantee recognize the agricultural and special character of the Property, and have the common purpose of the conservation and protection in perpetuity of the Property through the use of restrictions on the Property and with the transfer from Grantor to Grantee of affirmative rights for the protection of the Property, intending the grant of such restrictions and rights to qualify as a “qualified conservation contribution” as that term is defined under Section 170(h) of the Code.

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, as well as good and valuable monetary consideration, the receipt and sufficiency which is acknowledged by the Grantor, and pursuant to Section 170(h) of the Code and the laws of the State of Hawaiʻi, including HRS 198, Grantor hereby voluntarily grants and conveys to Grantee and its successors and permitted assigns a conservation easement (the “Easement”) in perpetuity over the Property of the nature and character and to the extent hereinafter set forth. Grantor declares that the Property shall be held, mortgaged, encumbered, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, and easements hereinafter set forth, which covenants, conditions, restrictions, and easements shall be deemed to run with the land in perpetuity and to burden the Property in perpetuity.

COVENANTS AND RESTRICTIONS

A. Definitions

The definitions below shall have the same meaning as the reference source, where provided, and in all other cases, shall be given their natural, commonly accepted definitions.

1. “*Agriculture Lease*” means a lease permitted by Maui County Code 19.30A.080, or as hereafter amended, where (a) the principal use of the leased land is agriculture, and (b) no permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area; however, this restriction shall not prohibit the construction of storage sheds, equipment sheds or other structures appropriate to the agricultural activity carried on within the leased premises, if otherwise permitted in this Easement.
2. “*Agricultural Values*” means the values of the Property to be preserved in perpetuity, which values are identified in Section C.1 of the Recitals.
3. “*Approval by Grantee*” is required prior to some Grantor actions, as identified in this Easement. The Approval process is set forth in Section H.3.
4. “*BLNR*” means the State of Hawaiʻi Board of Land and Natural Resources.

5. "CFR" means the Code of Federal Regulations.
6. "Coastal Area" means that portion of the Property *makai* of Kamehameha V Highway, which is approximately 5,000 square feet in size, and which is not suitable or appropriate for farming or grazing.
7. "The Code" means the Internal Revenue Code of 1986, as now enacted or hereinafter amended, and the regulations thereunder.
8. "Conservation Plan" means a plan prepared by NRCS in partnership with the Grantor to establish agriculture management protocols for the Property.
9. "County" means the County of Maui.
10. "Developable area" means the same as MCC § 19.04.040 as of the time of recording this Easement, namely the total area, in square feet, of all enclosed living areas of dwellings.
11. "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.
12. "Family" means an individual living alone or a group of two or more persons related by blood or marriage and their legal issue living together as a single housekeeping unit in a dwelling unit and in which two boarders, unrelated by blood may be living on a long-term residential basis. A family may also be defined as no more than five unrelated persons living together as a single housekeeping unit (MCC § 19.04.040).
13. "Farm Area" means any portion of the Property which is not part of the Farmstead Area or the Coastline Area.
14. "Farm Structures" means structures that are in furtherance of, and reasonably necessary in connection with, the agricultural activities on the Property, excluding "farm dwellings" (see definition for "Farmstead Residence Structures, Section A.16, below) but including, but not limited to: ponds; water tanks; water transmission lines; irrigation systems; barns; vehicle, tool and equipment storage areas; workshops; stables; greenhouses; shadehouses; storage and processing facilities; mills; maintenance facilities; fences; pens; and riding arenas, paddocks and corrals.
15. "Farmstead Area" means the area of approximately three (3) acres in size, identified in Exhibit B, which is not located on Prime Farmland, and within which the Grantor is permitted to construct Farmstead Residence Structures and Farm Structures, as permitted by state and county law, without prior approval from Grantee.

16. *"Farmstead Residence Structures"* means:
- a. Up to two "farm dwellings -- one main dwelling for a Family not exceeding 3,500 square feet of Developable Area, and one accessory dwelling for a Family not exceeding 1,000 square feet of Developable Area -- subject to the following additional conditions: (i) the dwellings must be located entirely within the Farmstead Area; and (ii) the dwellings must be used in connection with a lot on which the majority of the land is used for and the predominant activity is agriculture and/or agricultural land conservation); and
 - b. Associated structures and improvements, which must be located within the Farmstead Area, as are customarily appurtenant to comparable farm dwellings in the vicinity of the Property, including, but not limited to, personal, non-commercial recreational facilities, garages, barns, stables, paddocks, storage sheds, catchments systems, septic tanks and leach fields, wind towers, solar panels, and other buildings and facilities ordinarily associated with the Farmstead uses permitted under this Easement, and also including, to the extent permitted by law, a customary home occupation or professional office for the occupants.
17. *"FOTG"* means the Field Office Technical Guide, the official document for NRCS guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. The FOTG contains detailed information on the conservation of soil, water, air, plant and animal resources applicable to the local area for which it is prepared.
18. *"Grantor" - "Grantee"*. The terms "Grantor" and "Grantee," wherever used in this Easement, and any pronouns used in their place, shall be held to mean and include, respectively, the Dunbar Ranch Partners, and its personal representatives, heirs, successors, and assigns, and the Maui Coastal Land Trust, and its personal representatives, successors and assigns.
19. *"Hazardous Materials"* means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.
20. *"HRS"* means Hawai'i Revised Statutes.
21. *"HRS Chapter 198"* means the Hawai'i law governing conservation easements in Hawai'i, currently codified at Chapter 198 of the HRS, or as hereinafter amended, or any successor provision(s) hereinafter applicable.
22. *"Impervious Surfaces"* means the area of the Property covered by non-seasonal, permanent roof tops, concrete and asphalt, including residential buildings, agricultural buildings (with and without flooring), and paved areas both within and without the Farmstead Area (NRCS Guidance Manual § 519.64(H)).
23. *"MCC"* means Maui County Code.

24. "NRCS" means the Natural Resources Conservation Service, an agency of the U.S. Department of Agriculture delegated the task of managing the provisions of the FRPP or such other agency delegated that duty in the future.
25. "Notice to Grantee" is required prior to some Grantor actions but approval by Grantee is not part of the process. The process for Notice to Grantee is set forth in Section H.1.
26. "Prime Farmland" means land that has the best combination of physical and chemical characteristics for producing food, feed, fiber, forage, oilseed, and other agricultural crops with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil erosion (7 CFR § 1491.3).
27. "Purpose" means the purpose of this Easement as defined in Section B.
28. "State" means the State of Hawai'i.
29. "Unique Farmland" means land other than prime farmland that is used for the production of specific high-value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality or high yields of specific crops when treated and managed according to acceptable farming methods (7 CFR § 1491.3).
30. "Water Rights" means and includes any and all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Property.

B. Purpose

The Purpose of this Easement is to protect the agricultural soils, agricultural viability, and agricultural productivity of the Property, and the other Agricultural Values identified in Section C.1 of the Recitals in perpetuity. No activity which shall significantly impair the actual or potential use of the Property for agricultural production shall be permitted, and protection and preservation of agricultural production shall be given first priority in this Easement. To the extent that the preservation and protection of the other Agricultural Values of the Property referenced above may be accomplished without impairing the primary purpose of protecting the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity, it is also the purpose of this Easement to protect those other Agricultural Values of the Property, and to such extent, no activity which shall significantly impair those additional Agricultural Values of the Property shall be permitted.

C. Rights of Grantor

Except as prohibited or restricted by the provisions in Sections D, E, and F, Grantor reserves all customary rights and privileges of ownership, not granted to Grantee including, but not limited to, the following:

1. Alienation. The right to sell, lease, and devise the Property; and also the right to lease less than all of the Property, as long as such lease constitutes an Agriculture Lease;

2. Privacy and Quiet Enjoyment. The right of privacy and the right to deny access to other persons, except as provided by law or as expressly permitted to Grantee in this Easement;
3. Guests and Invitees. The right to permit or invite others to engage in, any use of, or activity on, the Property permitted by this Easement and not inconsistent with the Purpose of this Easement;
4. Agricultural Use. Except as expressly prohibited or restricted by the provisions in Sections D, E or F, the right to use the Property for all Agricultural Activities and Agricultural Production that comply with federal, state and local regulations and do not significantly impact or degrade the Agricultural Values of the Property;
5. Utility Services and Septic Systems. Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced, and, subject to the restrictions in E.3, Grantor may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved.
6. Other Rights. Any other rights consistent with the Statement of Purpose set forth in Section B above and not specifically prohibited or limited by this Easement.
7. Access. No right of access to any portion of the Property is conveyed by this Easement, except where expressly provided herein.
8. Affirmative Obligations. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control or no ability to foresee.

D. Permitted Agricultural Activities Subject to Conditions

The following agricultural activities and uses are permitted within the Farm Area and Farmstead Area on the Property and do not require Approval by Grantee. No notice to Grantee is required regarding initiating or conducting any reserved rights identified below unless expressly so stated:

1. Cultivation. Cultivation, harvesting and rotation of crops, including but not limited to silviculture, horticulture, forestry and other types of agricultural crop cultivation; provided a Conservation Plan is currently in effect for the Property and Grantor's current agricultural activities are consistent with this Conservation Plan. Prior to conducting any change in the current farming activities on the Property, Grantor shall consult with NRCS to determine whether a new or revised Conservation Plan is necessary. Grantor's agricultural activities shall be conducted consistent with any Conservation Plan in effect for the Property.
2. Animal Husbandry. Propagation of, raising of, and grazing of, livestock, including but not limited to game, poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use, but restricted as follows:

- a. Except with respect to the current grazing activities described immediately below in Section D.2.b, initiating any Animal Husbandry activities shall require prior Notice to Grantee, pursuant to the provisions in Section H.1 of this Easement. As part of the Notice, Grantor shall provide Grantee with a management plan approved by NRCS.
 - b. On the effective date of this Easement, the Property remains encumbered by a cattle grazing lease, which has been in effect for about twenty years. The lease permits use of portions of the Property suitable and appropriate for cattle grazing. Notwithstanding Subsection a, above, Grantor may continue this lease and renew this lease without Notice to Grantee, as long as the activities conducted by the lessee on the Property remain substantially the same and such lease is made subject to the terms of this Easement.
3. Farm Product Storage and Preparation. The storing and curing of agricultural products from the Property, and the preparation of farm products for wholesale or retail sales using raw farm products grown or raised on the Property, as long as such activities are permitted by law and are located within the Farmstead Area.
4. Farm Structures. Subject to the Impervious Surfaces limitations set forth in Section F.1, construction, repair, remodeling of, maintenance of, and use of Farm Structures within the Farmstead Area.
5. Farm Residence. Subject to the Impervious Surfaces limitations set forth in Section F.1, construction, repair, remodeling of, maintenance of, and use of, Farm Residence Structures, as defined in Section A.16 of this Easement, within the Farmstead Area.
6. Access to Farming Activities. Subject to the Impervious Surfaces limitations set forth in Section F.1, and as required by the County, but not for the purpose of Subdivision, which is prohibited by this Easement, the right to convey easements benefiting certain of the parcels within the Property and burdening other parcels within the Property for the purpose of providing reasonable rights-of-way, including providing roadway and utility access, to permitted Farm Residence Structures or Farm Structures, and crops or growing areas on the Property, and to cut trees, grass, and other vegetation to provide such access and rights-of-way. Roadway or utility improvements made under the provisions of this provision shall be done in a manner so as to create the least possible disturbance to the Agricultural Values of the Property (for example, by creating access along unpaved roads), and in no event shall such improvements be greater than those imposed by governmental requirements and/or consents.
7. Roadside Stand. Subject to the Impervious Surfaces limitations set forth in Section F.1, construction, repair, remodeling of, maintenance of, and use of a roadside stand within the Farmstead Area for the sale of agricultural products grown on the Property.
8. Maintenance and Improvement of Water Sources. The right to use and maintain, and, subject to approval by NRCS, the right to establish, construct, and improve -
- water sources, water courses and water bodies within the Property for the uses

permitted by this Easement. However, the construction of reservoirs shall be permitted only with the permission of Grantee.

9. Coastal Area. To the extent permitted by State or County law, Grantor may place temporary structures, such as picnic tables, grills, walkways and docks for personal use only, within the Coastal Area.
10. Chemical Applications. Subject to all applicable labeling requirements and laws, agricultural chemicals may be applied to the Property for bonafide agricultural purposes provided that the application of such chemicals does not significantly impact or degrade the Agricultural Values of the Property.
11. Recreation. The right to undertake non-commercial recreational activities, such as, but not limited to, picnicking, hunting, hiking, shooting, fishing and bird watching on the Property; provided that such activities do not require the construction of structures and are conducted in a manner and intensity that does not adversely impact the Agricultural Values of the Property and the Purpose of this Easement or otherwise impact any protected soils, wetlands or cultural sites.
12. Motorized Recreational Vehicles. Motorized recreational vehicles, such as motorcycles and all terrain vehicles are permitted; provided they are used to conduct the agricultural activities permitted by this Easement, and the use of such vehicles will not significantly impact any of the Agricultural Values of the Property. Motorized recreational vehicle use for other purposes is prohibited.
13. Fences. The right to construct and maintain fences within or around the Property; provided that their design and location shall not impair the Agricultural Values of the Property or be contrary to the Purpose of this Easement.
14. Small Signs. Grantor may erect signs less than three (3) square feet in size on the Property; provided, if signs are proposed to be placed within the Coastal Area, the signs should be located to preserve, as much as possible, views from Kamehameha V Highway to the coastline and ocean.

E. Activities and Uses Requiring Grantee's Approval

The following agricultural activities and uses are permitted on the Property upon receiving Approval by Grantee pursuant to the approval procedures set forth in Section H.3:

1. Farm Structures within the Farm Area. Subject to Approval by Grantee pursuant to Section H.3, and subject to the impervious surface limits set forth in F.1, Grantor may construct, maintain and use Farm Structures in the Farm Area, defined above in Section A.13. Examples of Farm Structures that are consistent with this Easement include but are not limited to: water tanks for cattle, irrigation or fire safety and fire protection of property and permitted improvements, structures for conditioning plants and trees to higher elevations, and tool and equipment sheds. Approval is not required for Farm Structures constructed within the Farmstead Area, which is not part of the Farm Area.
2. Supplemental Income Activities. Grantor and Grantee agree and acknowledge that economically viable farming in Hawai'i is becoming increasingly difficult and

therefore there is a need for flexibility in the permitted agricultural activities on the Property. It is further understood and agreed that with careful planning and management compatible supplemental income activities and uses may offer an important adjunct to farm income from the Property without impacting the Easement Purpose and the Agricultural Values. Therefore, other activities and uses, which are secondary to the cultivation and animal husbandry activities identified in Sections D.1 and D.2 of this Easement, but which afford Grantor supplemental financial opportunities, and which may assist in assuring the economic viability of the primary cultivation and animal husbandry activities, may be permitted, subject to: (a) the impervious surfaces limitations in F.1; (b) approval by NRCS; and (c) approval by Grantee pursuant to Section H.3.

3. Easements and Dedications. Upon Approval by Grantee pursuant to Section H.3 and NRCS based upon its assessment whether the granting of such rights is not inconsistent with the Purposes of this Easement, Grantor may grant or convey easements or make dedications of land as set forth below, and grant the right to improve and maintain such easements, including, subject to the Impervious Surfaces limitations set forth in Section F.1, grant the right to harden or permit the hardening of surface areas:
 - a. Easements to governmental agencies or utility providers for the installation, maintenance, repair and replacement of underground utility services;
 - b. Dedication of portions of the Property fronting the existing highway, Kamehameha V, to the State or County as may be required by law;
 - c. Easements to adjoining lands for drainage easements which may be required by the County.
4. Coastal Area
 - a. *Permanent Structures.* Subject to Approval by Grantee pursuant to Section H.3, fences or culverts may be permitted within the Coastal Area.
 - b. *Plant Restoration.* Subject to Approval by Grantee pursuant to Section H.3, native plant restoration and other ecological restoration projects are permitted.
5. Miscellaneous. Subject to Approval by Grantee pursuant to H.3, the following are permitted:
 - a. Ponds and reservoirs; however, for the purposes of this Easement, ponds and reservoirs shall be subject to the Impervious Surface limitations set forth in Section F.1;
 - b. Large Signs in excess of three (3) square feet in size;
 - c. Feedlots, upon first obtaining approval by NRCS to a comprehensive nutrient management plan for the proposed feedlots.

F. Prohibitions and Other Restrictions

The following activities and uses are prohibited or restricted unless an exception is expressly provided:

1. Impervious Surfaces. The aggregate impervious surfaces on the Property shall not exceed 6% (six percent) of the Property area, except that conservation practices listed in the FOTG and approved by NRCS are exempt from this impervious cover limitation.
2. Subdivision. The legal or "de facto" division, subdivision or partitioning of any of the Property; however, Grantor may lease portions of the Property if the lease constitutes an Agriculture Lease, as provided by Section C.1;
3. Coastal Area.
 - a. *Permanent Structures.* No permanent structures are permitted within the Coastal Area, except those identified in Section E.4.a, which require Approval by Grantee.
 - b. *Agriculture Activities.* Farming within the Coastal Area is prohibited, except native plant restoration, as provided by Section E.4.b.
4. Uses and Activities Inconsistent with the Purpose of the Easement. Any use of, or activity on, the Property inconsistent with the Purpose of this Easement is prohibited, and Grantor acknowledges and agrees that it will not conduct, engage in, or permit any such use or activity. Without limiting the generality of the foregoing, the following uses of, or activities on, the Property, though not an exhaustive list of inconsistent uses or activities, are inconsistent with the purposes of this Easement and shall be prohibited, except where expressly reserved as unconditional or conditional rights of Grantor, as established in Sections C, D and E of this Easement:
 - a. *Alteration of Land.* The alteration of the surface of the land, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except for the alteration of land to carry out the construction or maintenance of permitted structures or improvements within the Farm Area or the Farmstead, or permitted agricultural activities conducted pursuant to a Conservation Plan;
 - b. *Erosion or Water Pollution.* Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters;
 - c. *Harm to Wetlands.* The draining, filling, dredging, ditching, or diking of wetland areas, except as permitted by Grantee upon a finding it will not significantly diminish the Agricultural Values of the Property or be inconsistent with the Purpose of this Easement;
 - d. *Waste Disposal.* The disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly, offensive, or hazardous waste or material on the Property;
 - e. *Signs.* The placement of commercial signs, billboards, or other advertising material on the Property, except as provided in Sections D.14; and E.5;

- f. *Yard Lights.* The placement and use of any outdoor electric lights outside the Farmstead Area, except upon Approval by Grantee pursuant to Section H.3; and
- g. *Mining.* The exploration for, or development and extraction of, minerals and hydrocarbons on, below or through the surface of the Property.
- h. *Water Rights.* Grantor shall not transfer, encumber, sell, lease or otherwise separate any Water Rights for the Property or change the historic use of the Water Rights without the Approval by Grantee. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights without Approval by Grantee pursuant to Section H.3.

G. Affirmative Rights Conveyed to Grantee

To accomplish the Purpose of this Easement the following rights are conveyed to Grantee:

1. Protection. Grantee has the right to preserve and protect in perpetuity, to prevent any use of, or activity on, the Property that will significantly impair or interfere with the Agricultural Values of the Property, and to enhance by mutual agreement the Agricultural Values of the Property.
2. Access. Grantee has the right to enter the Property at least annually, or more frequently if a violation is suspected, at a reasonable time and upon prior notice to Grantor, for the purpose of making inspections to monitor compliance with this Easement and for enforcement purposes as set forth below
 - a. *Annual Monitoring.* Grantee shall have the right to enter the Property at least once annually to inspect the Property for consistency with this Easement. Grantee shall make reasonable efforts to establish a mutually agreeable time for the annual monitoring visit but under no circumstances shall Grantee provide less than forty-eight hours notice of its intent to inspect the Property for annual monitoring purposes. Such entry shall not in any case unreasonably interfere with Grantor's allowed uses and quiet enjoyment of the Property.
 - b. *Emergency Entry.* If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Agricultural Values of the Property, Grantee may enter the Property for the purpose of inspection, without prior notice to Grantor or without waiting for the period provided for cure to expire; provided, that Grantee shall first make a reasonable attempt under the circumstances to give verbal/telephone notice to Grantor of the violation and proposed action.
3. Enforcement. Grantee has the right to enforce this Easement and the covenants and restrictions herein, including, but not limited to, the right to enjoin any use of, or activity on, the Property that is inconsistent with the Purpose of this Easement, and to require the restoration of such areas or features of the Property as may be damaged by uses or activities inconsistent with the provisions of this Easement. Grantee at its sole discretion may also engage in alternative dispute resolution

methods with Grantor, such as mediation, subject to the parties' agreement on the terms of such alternative dispute resolution methods.

- a. *Notice of Violation, Corrective Action.* If Grantee determines that the Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the Purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.
- b. *Grantor's Failure to Respond.* Grantee may bring an action as provided in this Section G.3 if Grantor:
 - i. Fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee;
 - ii. Under circumstances where the violation cannot reasonably be cured within the thirty (30) day period, fails to begin curing such violation within the thirty (30) day period and fails to continue diligently to cure such violation until finally cured.

4. Remedies; Damages

Grantee's rights and remedies identified in this Section apply equally in the event of either actual or threatened violations of the terms of this Easement and shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- a. *Injunctive Relief.* Grantee may bring an action at law or in equity to enforce the terms of this Easement:
 - i. To enjoin the violation, ex parte as necessary, by temporary or permanent injunction; and
 - ii. To require the restoration of the Property to the condition that existed prior to any such injury.
- b. *Damages.* Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Agricultural Value protected by this Easement, to the extent such damages may be ascertained. Without limiting Grantor's liability in any way, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking corrective or restoration action on the Property. Grantor is barred from using this provision regarding damages as an affirmative defense against Grantee's rights to injunctive relief.
- c. *No Bond Required.* Any action for injunctive relief or damages may be taken without Grantee being required to post bond or provide other security.
- d. *Costs of Enforcement.* All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of

restoration necessitated by Grantors' violation of the terms of this Easement, shall be borne by Grantor; provided, however, that if Grantor prevails in a judicial enforcement action, each party shall bear its own costs.

5. Grantee's Forbearance. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any terms of this Easement by Grantor, its agents, employees, contractors, family members, invitees or licensees shall not be deemed or construed to be a waiver by Grantee of such term or any Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.
6. Waiver of Certain Defenses. Grantor acknowledges that it has carefully reviewed this Easement and has consulted with and been advised by counsel of its terms and requirements. In full knowledge of the provisions of this Easement, Grantor hereby waives any claim or defense it may have against Grantee in interest under or pertaining to this Easement based upon waiver, laches, estoppel, or prescription.
7. Acts Beyond Grantor's Control; Emergency Conditions. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor to abate, correct, or restore any condition on the Property or to recover damages for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or for acts of trespassers, that Grantor could not reasonably have anticipated or prevented, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes or to protect bonafide public health or safety in an emergency situation.

H. Notice; Approval; Breach; Compliance Certificates

1. Notice to Grantee. "Notice to Grantee," as required in this Easement, is for the sole purpose of informing Grantee of Grantor's intent to exercise one of the rights or activities in Section D identified as requiring notice, and to afford Grantee the opportunity to monitor Grantor's actions while pursuing or exercising such reserved right. Grantor's obligation to provide notice is expressly limited to the activities expressly requiring Notice to Grantee and identified in Section D of this Easement. Grantee's right to monitor does not include a right to intervene, unless provided by the Affirmative Rights and Remedies granted to Grantee in Section G of this Easement.
2. Notice procedure. Prior to pursuing or engaging in any of those activities in Section D which are identified as expressly requiring Notice to Grantee, Grantor shall notify Grantee as follows. Delivery of the Notice shall be as required by Section H.6. The Notice shall describe the nature, scope, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to monitor such activity. Unless Grantee expressly identifies a lesser period of time, Grantor shall not initiate or exercise the activity requiring notice

until thirty (30) days after Grantee's "Receipt of Notice," as determined by Section H.7.

3. Approval by Grantee. Prior to pursuing or engaging in the activities identified in Section E of this Easement, Grantor shall follow the procedures set forth in this Section H.3
 - a. Approval Procedures. Grantor shall request approval from Grantee in writing. The request for approval shall describe the nature, scope, location, timetable, identify its conformity with this Easement, and, when applicable, evidence conformity with existing land use regulations, and any other material aspect of the proposed activity. Delivery of the request for approval shall be as required by Section H.6. Grantee shall have thirty (30) days from receipt of the request in which to approve, disapprove, or approve subject to modification, the request. In the case of withholding of approval, Grantee shall notify Grantor in writing with reasonable specificity of the reasons for withholding of approval, and the conditions, if any, on which approval might otherwise be given.
 - b. Standard of Approval. Grantee shall not unreasonably withhold approval of a proposed use or activity requiring approval under Section E where the proposed activity or use will not significantly impact the Agricultural Values and the proposed activity or use is consistent with the Purpose of this Easement. With respect to considering whether a proposed use is consistent with this Easement, Grantee shall include in its consideration the uses permitted under HRS 205-4.5, as it may be amended from time to time, or any corollary provision that is enacted. (An abbreviated description of the current permitted uses under HRS 205-4.5 is provided in Section B.1 of this Easement's Recitals.) In addition, Grantee should usually permit or approve of proposed activities that are permitted by NRCS or that are consistent with the FOTG.
4. Breach of Notice and Approval Provisions. Failure to provide Notice or obtain Approval as required in this Section H and its subsections shall be a material breach of this Easement and shall entitle Grantee to such rights or remedies as may be available under Paragraph G of this Easement. Notwithstanding the foregoing, Grantee may, at its sole option, permit Grantor to cure the breach by submitting after-the-fact communications and documents showing the conformity of such activity with this Easement and with any relevant Federal, State or County laws, or by showing despite lack of conformity with this Easement or the laws, that the action was justified because of an emergency.
5. Compliance Certificates. Grantee shall, within thirty (30) days of a request by Grantor, execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, that certifies, to the best of Grantee's knowledge, Grantor's compliance or lack thereof with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current

documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request.

6. Addresses for Notices and Responses. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing either served personally or sent by certified mail, return receipt requested, postage prepaid, addressed to as follows:

To Grantor:

Lance Dunbar
Dunbar Ranch Partners
HC01 Box 901
Kaunakakai, HI 96748

With a copy to:

Tom Pierce, Esq.
P.O. Box 798
Makawao, HI 96768

To Grantee:

Maui Coastal Land Trust
P.O. Box 965
Wailuku, HI 96793

Copy to NRCS:

NRCS State Conservationist
300 Ala Moana Blvd.
Honolulu, HI 96850

or to such other address as either party from time to time shall designate by written notices to the other.

7. Time Computation for Receipt of Notice. With respect to any provision of this Easement requiring notice, demand, request, consent, approval, or communication by a date certain, "Receipt of Notice" shall be considered to have occurred upon two days after mailing by first class mail.

I. **Costs, Liabilities and Insurance, Taxes, Environmental Compliance and Indemnification.**

1. Costs, Legal Requirements, Liabilities and Insurance. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of any insurance coverage desired by Grantor. Grantor and Grantee release and relieve the other, and waive their entire right to recover for loss or damage to the extent that the loss or damage is covered by proceeds of the injured party's insurance. This waiver applies whether or not the loss is due to the negligent acts or omissions of Grantor or Grantee. Grantor remains solely responsible for obtaining any applicable governmental permits and approval for any activity or use permitted by this Easement, and any such activity or use shall

be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. This provision I.1. shall not apply to the United States.

2. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. If Grantor fails to pay any Taxes when due, Grantee is authorized, but in no event obligated, to make or advance such payment of Taxes upon three (3) days prior written notice to Grantor, in accordance with any bill, statement, or estimate procured from the appropriate authority, without inquiry into the validity of the Taxes or the accuracy of the bill, statement or estimate, and the obligation created by such payment shall bear interest until paid by Grantor at the maximum rate allowed by law.
3. Environmental Warranty and Remediation.
 - a. Grantor warrants that it is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property. Grantor warrants that it has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits.
 - b. Grantor promises to indemnify and hold harmless the United States against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.
 - c. If at any time, there occurs, or has occurred, a release in or on the Property of a Hazardous Material, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Grantee.
4. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee or the United States to exercise physical or managerial control over the day-to-day operations of the Property, of any of Grantor's activities on the Property, or otherwise to become an "operator" with respect to the Property within the meaning of the

Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended ("CERCLA") or the environmental laws of the State.

5. *Hold Harmless.* Grantor shall hold harmless, defend and indemnify Grantee, and shall hold harmless and indemnify the United States, from any and all liabilities, injuries, losses, damages, judgments, costs, expenses of every kind, and fees, including reasonable attorney's fees actually incurred, Grantee may suffer or incur as a result of or arising out of the wrongful intentional or negligent act or omission of Grantor, Grantor's employees, agents, guests, and invitees on the Property. Grantee agrees to hold harmless, indemnify, and defend Grantor from any and all liabilities, injuries, losses, damages, judgments, costs, expenses of every kind, and fees, including reasonable attorney's fees actually incurred, Grantor may suffer or incur as a result of or arising out of the wrongful intentional or negligent act or omission of Grantee, Grantee's employees, agents, guests, and invitees on the Property. The immediately preceding sentence shall not apply to the United States.

J. Transfer; Amendment; Extinguishment

1. *Transfer of Property.* Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which Grantor transfers any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and the United States of the proposed transfer of any such interest at least ten (10) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way, nor shall such failure in any way be interpreted to void or make voidable the conveyance of any such interest.
2. *Limitations on Amendment.* If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor, Grantee, and the United States may by written agreement jointly amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and HRS Chapter 198. Any such amendment shall be consistent with the purpose of this Easement, shall not affect its perpetual duration, shall not permit any residences on the Property other than those expressly reserved in this Easement, and shall not permit any impairment of the significant Agricultural Values of the Property. Any such amendment shall be signed and executed by Grantor, Grantee and the United States, and filed in the State of Hawai'i Bureau of Conveyances. Nothing in this paragraph shall require Grantor, Grantee, or the United States to agree to any amendment or to consult or negotiate regarding any amendment.
3. *Limitations on Extinguishment.* If circumstances arise in the future that render the Purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceedings in a court of competent jurisdiction. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion

of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and net of any costs or expenses associated with such sale, Grantor, Grantee, the State of Hawai'i, and the United States shall divide the proceeds from such sale in accordance with their respective percentage interests in the fair market value of the Property, as such percentage interests are determined under the provisions of Section J.4, adjusted, if necessary, to reflect a partial termination or extinguishment of this Easement. Any proceeds received by Grantee shall be used by Grantee in a manner consistent with Grantee's conservation purposes.

4. Percentage Interests. This Easement constitutes a real property interest immediately vested in Grantee and the United States, which, for purposes of this section J.4, the parties stipulate to have a value determined by multiplying (a) the fair market value of the Property ("FMV") unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by (b) the ratio of the value of the Easement at the time of this grant to the FMV of the Property unencumbered by this Easement at the time of this grant (the "Easement/FMV Ratio"). The parties agree that the Easement/FMV Ratio at the time of this Easement is sixty-three and forty-six hundredths percent (63.46%). The parties agree that the United States' contribution toward the purchase of the Easement is fifty percent (50%) of the appraisal of the value of this Easement, effective November 29, 2006, prepared by John Child and Company, approved by the NRCS and DLNR (the "Approved Easement Appraisal"); that the State of Hawai'i's contribution toward the purchase of the Easement is thirty-seven and ninety-three hundredths percent (37.93%) of the Approved Easement Appraisal; and that Grantor's contribution towards the Easement value (in the form of a charitable donation to Grantee) is twelve and seven hundredths percent (12.07%) of the Approved Easement Appraisal. For the purpose of this section J.4, the Easement/FMV Ratio shall remain constant at all times in the future, regardless of the change in FMV of the Property or other factors.
5. Condemnation. If all or any part of the Property is proposed to be taken under the power of eminent domain by public, corporate, or other authority, then Grantee shall provide notice to the United States and BLNR at the earliest practicable time. Due to the federal interest in this Easement, it may only be condemned by the advance written consent of the United States. If condemnation occurs, or an interest in the Property is otherwise acquired, Grantor and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Easement in connection with such taking shall be paid out of the recovered proceeds. Grantor, the State of Hawai'i, and the United States shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs J.3 and J.4 (with respect to the allocation of proceeds), subject to any Internal Revenue Code requirements related to allocation of Grantor's contribution toward the cost of the Easement. The rights of Grantor, Grantee, the State of Hawai'i, and the United

States set forth in this Section J.5 shall be in addition to, and not in limitation of, any rights they may have at common law.

K. Assignment and Succession

1. Assignment. Subject to the following conditions and with the advance written approval of the United States and BLNR, Grantee may assign its rights and obligations under this Easement to a qualified organization, as described below:
 - a. Grantee may assign this Easement only to an organization that is at the time of the assignment a qualified organization under Section 170(h) of the Code, and is, in addition, authorized to acquire and hold conservation easements under HRS Chapter 198;
 - b. The assignment shall be subject to the terms of succession referenced in Section K.2 below;
 - c. Grantee shall require the transferee to exercise its rights under the assignment consistent with the Purpose of this Easement;
 - d. Grantee shall obtain Grantor's approval of the transferee organization, which approval shall not be unreasonably withheld by Grantor.
2. Succession. If at any time it becomes impossible for Grantee to ensure compliance with the covenants, terms, conditions and restrictions contained in this Easement and Grantee has not named a successor organization, or the Grantee shall cease to exist or to be a qualified organization under Section 170(h) of the Code or to be authorized to acquire and hold conservation easements under HRS Chapter 198, and the United States declines to exercise its right under this Easement, then, subject to the advance written approval by BLNR, Grantee's rights and obligations under this Easement shall vest in an entity with purposes similar to Grantee's, constituting a "qualified organization" within the meaning of Section 170(h) of the Code; provided that if such vesting in any such entity is deemed to be void under the Rule Against Perpetuities, the rights and obligations under this Easement shall vest in such organization as a court having jurisdiction shall direct, pursuant to the applicable Hawai'i law and the Code, and with due regard to the purposes of this Easement.

L. Contingent Rights of NRCS

In the event that the Grantee fails to enforce the terms of this Easement, as determined in the sole discretion of the Secretary of the United States Department of Agriculture ("Secretary"), the Secretary, his successors and assigns shall have the right to enforce the terms of the Easement through any and all authorities available under Federal or State law. Further, in the event that the Grantee attempts to terminate, transfer, or otherwise divest itself of rights, title, or interest in this Easement or extinguish the Easement without prior consent of the Secretary and payment of consideration as provided herein, then at the option of the Secretary, all right, title, or interest in this Easement shall become vested in the United States of America.

M. General Provisions

1. Reasonableness Standard. Grantor and Grantee shall follow a reasonableness standard and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them (either separately or jointly) under this Easement in a timely manner and shall cooperate with one another and shall take all other reasonable action suitable to that end.
2. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State and any applicable federal law.
3. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed to fulfill the Purpose of this Easement and the policy and purpose of HRS Chapter 198. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
4. Severability. If any provision of this Easement, or its application to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.
5. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Property and supersedes all prior discussions, negotiations, understandings, or agreements between Grantor and Grantee relating to the Property, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section J.1.
6. No Forfeiture. Nothing contained in this Easement shall result in a forfeiture or reversion of Grantor's title in any respect.
7. Successors and Assigns; Runs with Land. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties to this Easement and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Property.
8. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
9. Counterparts. The parties may execute this instrument in two or more counterparts. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
10. Effective Date. Grantor and Grantee intend that the restrictions arising hereunder shall take effect on the date of this Easement being recorded in the

State of Hawai'i Bureau of Conveyances after all required signatures have been affixed hereto, and after closing of the transaction contemplated in this Easement whereby Grantor agrees to the perpetual covenants and restrictions set forth in this Easement in exchange for FRPP funds at the amount agreed to between Grantor, Grantee and the NRCS.

11. No Merger. The Grantee agrees to take whatever steps are necessary to ensure that merger of the fee and Easement estates does not occur in order to ensure the continued viability of this Easement.

TO HAVE AND TO HOLD, this Conservation Easement from Grantor to Grantee and their respective successors and assigns forever.

GRANTOR:

By: _____
Lance M. Dunbar, Trustee of the
Dunbar Family Irrevocable Trust dated 1/18/91,
General Partner
Dunbar Ranch Partners

GRANTEE:

By: _____
Dale B. Bonar
Executive Director
Maui Coastal Land Trust

By: _____
Helen Nielsen
President
Maui Coastal Land Trust

NATURAL RESOURCES CONSERVATION SERVICES:

By: _____
Lawrence T. Yamamoto
Director
Pacific Islands Area
Natural Resources Conservation Service

STATE OF HAWAI'I)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 2006, before me personally appeared **Lance Dunbar**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

(Signature)

(Print Name)

Notary Public, State of Hawai'i

My Commission expires: _____

STATE OF HAWAI'I)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 2006, before me personally appeared **Dale Bonar**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

(Signature)

(Print Name)

Notary Public, State of Hawai'i

My Commission expires: _____

On this _____ day of _____, 2006, before me personally appeared **Helen Nielson**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

My Commission expires:

On this _____ day of _____, 2006, before me personally appeared **Lawrence Yamamoto**, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

My Commission expires: _____

PROPERTY DESCRIPTION

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Land Patent Grant Number 3730, Apana 1 to Mrs. Emma M. Nakuina and Land Patent Number 8119, Land Commission Award Number 7758, Apana 1 to Kamiona) situate, lying and being at Poniuohua 1, Poniuohua 2, Kainalu and Kawaikapu, Island of Molokai, County of Maui, State of Hawaii, bearing Tax Key designation (2) 5-7-003-054, and containing an area of 166.980 acres, more or less.

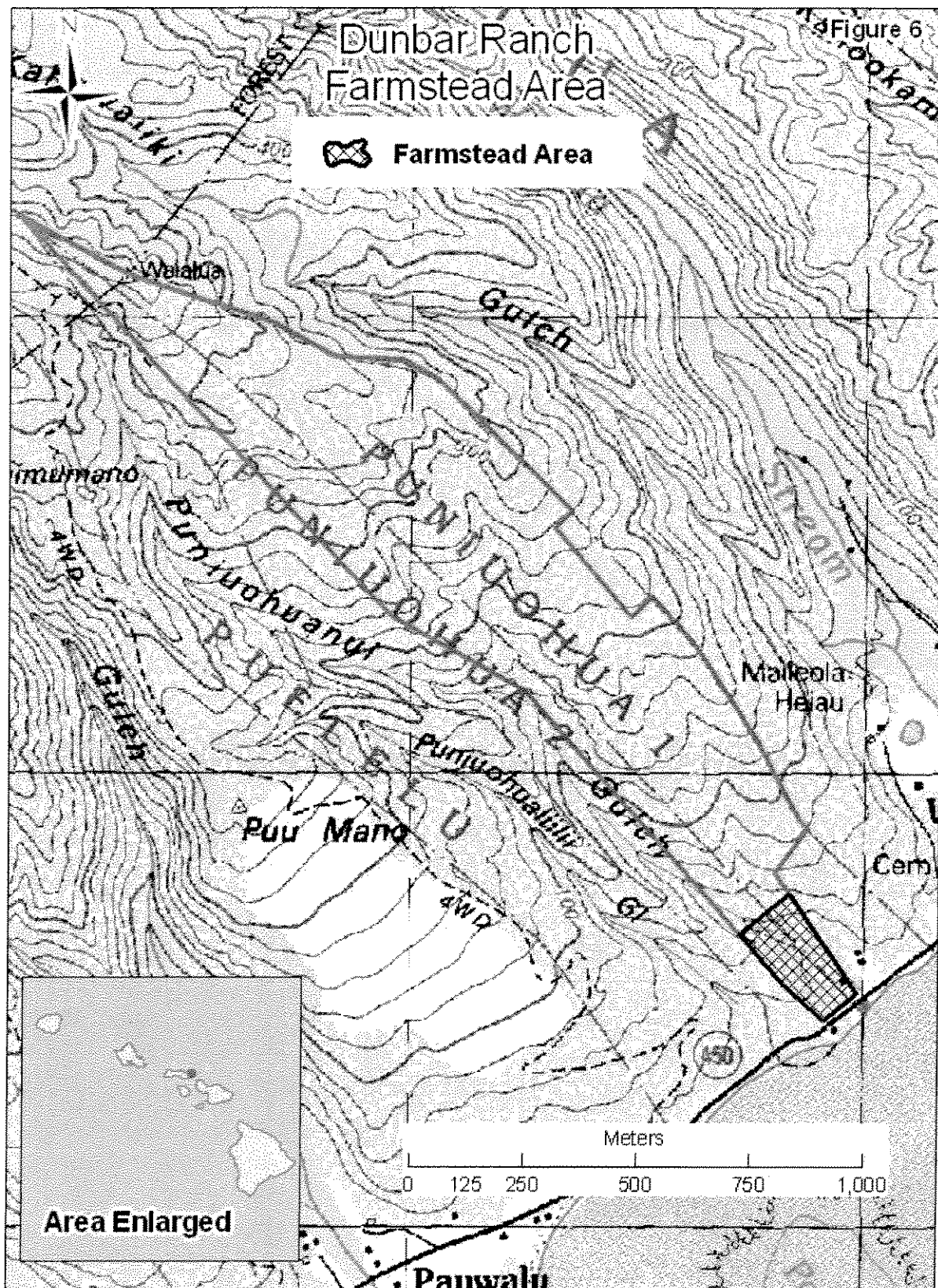
EXCEPTIONS TO TITLE

**(Per Status report, revised 11/02/06, issued by Title Guaranty,
Order No. 200636215)**

1. Any and all Real Property Taxes that may be due and owing.
2. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
3. Molokai Forest Reserve as shown on the Tax Map.
4. Old Government Road as shown on the Tax Map.
5. Possible access rights in favor of tax map key (2) 5-7-003-046.
6. Free flowage of stream.
7. Triangulation Survey Station "WAIALUA" located within the land described herein, as shown on the Tax Map. Attention is invited to the provisions of Section 172-13 of the Hawaii Revised Statutes, relative to destruction, defacing or removal of survey monuments.
8. Discrepancies, conflicts in boundary lines, shortage in area, encroachments or any other matters which a correct survey or archaeological study would disclose.
9. Claims arising out of customary and traditional rights and practices, including without limitation those exercised for subsistence, cultural, religious, access or gathering purposes, as provided for in the Hawaii Constitution or the Hawaii Revised Statutes.

Deed of Conservation Easement

EXHIBIT "A"



**Deed of Conservation Easement
EXHIBIT "B"**